In the High Court of Judicature at Madras

Dated: 04.07.2006

Coram:

The Honourable Mr.Justice P.SATHASIVAM

and

The Honourable Mr.Justice V.DHANAPALAN

Habeas Corpus Petition No.314 of 2006

Kasthuri ..Petitioner

.vs..

1. The Secretary to Government,
   Prohibition and Excise Department,
   Fort St.George,
   Chennai-9.

2. The Commissioner of Police,
   Greater Chennai. ..Respondents

Habeas Corpus Petition Petition filed under Article 226 of the Constitution of India praying for issuance of writ of habeas corpus by calling for the entire records leading to the detention of the petitioner's husband namely Sathish alias Sathish Kumar, S/O.Nagarajan detained under Act 14 of 1982 vide detention order dated 27.2.2005 on the file of the 2nd respondent herein made in Memo.No.562/BDFGISV/2005 dated 27.12.2005 and quash the same.

For Petitioner : Mr.C.Rajan for
Mr.P.M.Bakthavatsalam

For Respondents : Mr.M.Babu Muthu Meeran,
Additional Public Prosecutor.

ORDER

(Order of the Court was made by P.SATHASIVAM, J.,)

The petitioner by name Kasthuri, challenges the impugned order of detention dated 27.12.2005, detaining her husband, Sathish @ Sathish Kumar, as "Goonda" under Section 3 (1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders and Slum Grabbers Act, 1982 (in short "Tamil Nadu Act 14 of 1982").

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2. Heard both sides.

3. Learned counsel appearing for the petitioner, at the foremost, submitted that there was delay in disposal of the representation of the detenu dated 13.02.2006.

4. With regard to the same, the learned Additional Public Prosecutor appearing for the respondents furnished the particulars, which show that the said representation of the detenu was received by the Government on 14.02.2006; remarks were called for on 15.02.2006; remarks were received on 21.02.2006 and the file was submitted on 22.02.2006. Thereafter, the file was dealt with by the Under Secretary on the same day i.e.on 22.02.2006 and by the Secretary on 23.02.2006 and finally, the Minister for Prohibition and Excise passed an order on the same day i.e. 23.02.2006. The rejection letter was sent to the detenu on 27.02.2006 and served to the detenu on 28.02.2006. It was contended that though remarks were called for on 15.02.2006, there is no proper explanation for taking time till 21.02.2006 for forwarding the remarks. Here, the further details furnished by the learned Additional Public Prosecutor show that the intimation from the Government was received by the detaining authority on 16.02.2006; remarks were called for from the detaining authority on 17.02.2006 and the remarks were received from the sponsoring authority on 18.02.2006. Thereafter, the same was sent to the Government on 20.02.2006. It is brought to our notice that 18.02.2006 and 19.02.2006 were holidays as Saturday and Sunday. If we exclude the intervening holidays, we are of the view that there was no enormous delay or undue delay in disposal of the representation of the detenu. Accordingly, we reject the first contention.

5. Learned counsel appearing for the petitioner, by taking us through the grounds of detention, submitted that there is no material for warranting invocation of detention order. He also contended that the materials placed before the detaining authority, at the most, show that there is only law and order problem and there is no likelihood of breach of public peace or public order. He also contended that the detention order is liable to be quashed on the ground of non-application of mind. He further took us to relevant pages, namely, page Nos.187, 189 and 191 of the paper book supplied to the detenu.

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6. Going through the relevant documents, we are unable to accept the same for the following reasons.

In the grounds of detention, the detaining authority, particularly, in para 3, stated that when the detenu Sathish @ Sathish Kumar surrendered before the 13th Metropolitan Magistrate, Egmore, Chennai in P6 Kodungaiyur Police Station Crime No.1518 of

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2005 on 14.12.2005, he was remanded to judicial custody till 20.12.2005 and lodged at Central Prison, Chennai. It is also stated that when he was in the police custody along with other two accused, on 16.12.2005 at about 7.00 PM, the detenu Sathish @ Sathish Kumar requested the police personnel that he wanted to attend the nature's call and accordingly, he was taken to the toilet by Sub-Inspector of Police and his police party, which is situated at the western side of the police station, and left the detenu and the police personnel were waiting outside. It further shows that the said Sathish, who went inside the toilet and closed the door, at about 7.15 PM, suddenly opened the toilet door and tried to escape from the spot and proceeded to the junction of Meenambal Road and SIDCO Road and the police personnel chased him. The detaining authority has also noted the further details that, on seeing the police personnel chasing him, the detenu uttered vulgar words and picked up soda water bottles from the nearby bunk shop and broke the same and threatened the Head Constable and the persons standing nearby. It further shows that when the detenu rushed to stab the Head Constable Karthikeyan over his stomach, he warded off the attack with his right hand and it caused bleeding injury. The detenu also hurled the same against the police personnel indiscriminately and the public on noticing, ran for safer places out of fear and danger to their lives. It also refers that the public, who were proceeding in their vehicles, feared to move further resulting to traffic dislocation and the nearby shopkeepers closed their shops out of fear of danger and the normalcy in that area was totally dislocated and the situation was panic. All the statements from various persons, who witnessed the scene, the police personnel, etc., were taken note of by the detaining authority and after finding that if the detenu comes out he will commit further crimes, which will be prejudicial to the maintenance of public order, passed the impugned order of detention. The relevant statements of the public as well as the police personnel were available in the paper book. In such circumstances, it cannot be claimed that no materials were placed before the detaining authority.

7. Though the learned counsel appearing for the petitioner, after taking us through the remand orders, which are available at page Nos.187, 189 and 191, contended that there is no material warranting invocation of the detention order, on going through the relevant documents, we are satisfied that there is no substance for the said contention. Likewise, though the learned counsel appearing for the petitioner submitted that the respondents have created records to put the detenu under Act 14 of 1982, a perusal of the grounds and other documents supplied to the detenu amply shows that there were enough materials and after satisfying all those documents, the detaining authority clamped the order of detention. Accordingly, we reject the said contention.

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8. Further, the learned counsel appearing for the petitioner, by drawing our attention to para 4 of the grounds of detention, contended that there is no imminent possibility of coming out on bail since admittedly the detenu has not filed any bail application. In the light of the said contention, we verified para 4 of the grounds of the detention. It is clear that the detaining authority, taking note of the fact that, the detenu Sathish @ Sathish Kumar was in remand in P6 Kodungaiyur Police Station in Crime No.1581 of 2005 which relates to ground case and Crime No.1518 of 2005, which relates to adverse case and he has not moved any application and there is real possibility of his coming out on bail for the above case by filing bail application either before the Sessions Court or before this Court and if he comes out on bail, he will indulge in further activities, which will be prejudicial to the maintenance of public order, had passed the order of detention. It is not in dispute that there is no bar in filing bail application. In other words, the detaining authority was aware of all the details / materials before arriving conclusion that if the detenu comes out on bail, he will indulge in further activities. In such circumstances, we are unable to accept the said contention also.

9. In the light of what is stated above, we do not find any error or infirmity for interference. Accordingly, this petition fails and the same is dismissed.

gl

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Secretary to Government,
   Prohibition and Excise Department,
   Fort St.George,
   Chennai-9.

2. The Commissioner of Police,
   Greater Chennai, Egmore, Chennai-600 008.

3. The Superintendent,
   Central Prison,
   Chennai.
   (in duplicate for communication to detenu)

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4. The Joint Secretary to Govt.,
   Public (Law & Order),
   Fort St.George,
   Chennai-9.

5. The Public Prosecutor,
   High Court, Madras.

+ one cc to Mr.P.M.Bakthavatsalam, Advocate Sr.No.28392.

MAB (CO)
RSM/11.7.2006

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